

REMARKS

Overview

The Examiner responded in the prior Office Action as follows: rejected claims 16, 21, 24, 28, 85-86 and 88-93 under 35 U.S.C. § 102(e) as being anticipated by Hazzard et al. (U.S. Patent Application No. 2005/0125389); and rejected claim 87 under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

Applicants hereby cancel claim 87, and traverse the rejections of the remaining claims as discussed below. Thus, claims 16, 21, 24, 28, 85-86 and 88-93 are pending, and claims 17-20, 22-23, 25-27 and 29-84 are currently withdrawn.

Analysis

The Examiner has rejected claim 87 under 35 U.S.C. § 101 as being directed to non-statutory subject matter due to the recitation of a data transmission medium transmitting a generated data signal. While Applicants disagree that claim 87 recites non-statutory subject matter, Applicants have canceled claim 87, and thus this rejection is now moot.

The Examiner has rejected each of the other previously pending claims 16, 21, 24, 28, 85-86 and 88-93 under 35 U.S.C. § 102(e) as being unpatentable over Hazzard. However, each of the pending claims as rejected includes features and provides functionality not disclosed by Hazzard, and thus is allowable over that reference.

Furthermore, the subject matter of Applicants' pending claims was invented before the priority date of the Hazzard reference, and thus the Hazzard reference does not qualify as prior art for those claims under 35 U.S.C. § 102(e). In particular, in the response filed May 31, 2007 to the earlier Office Action dated December 6, 2006, Applicants filed two Declarations Of Prior Invention under 37 CFR 1.131 to demonstrate that Applicants conceived of the invention prior to the December 9, 2003 filing date of the Hazzard patent application, and diligently pursued the invention from a time prior to December 9, 2003 until the filing of the present application on January 27, 2004.

In the current Office Action dated August 8, 2007, the Examiner has agreed that the previously filed Declarations establish conception of the invention prior to the December 9, 2003

filing date of the Hazzard patent application, but asserts that the previously filed Declarations did not sufficiently establish diligence during the relevant time period due to not reciting dates of acts relied on to establish diligence. However, Applicants disagree that the previously filed Declarations did not sufficiently establish diligence, and request that the Examiner withdraw that assertion and the rejections based on the Hazzard reference. In particular, the previously filed Declaration of James White established that acts establishing diligence occurred during each full week in the period prior to December 9, 2003 until the filing of the present application on January 27, 2004, those being the weeks beginning with the following dates: December 14, 2003; December 21, 2003; December 28, 2003; January 4, 2004; January 11, 2004; January 18, 2004; and January 25, 2004. Accordingly, Applicants believe that the previously filed Declarations established sufficient dates regarding acts that establish diligence during the period from a time prior to December 9, 2003 until the filing of the present application on January 27, 2004, and thus Hazzard is rendered ineffective as prior art. Accordingly, the rejection of claims 16, 21, 24, 28, 85-86 and 88-93 is moot, and the pending claims are believed to be in allowable form.

Moreover, Applicants have further concurrently filed a revised Declaration Of Prior Invention under 37 CFR 1.131 by James White, which further provides numerous particular dates of acts related to diligence that occurred from a time prior to December 9, 2003 until the filing of the present application on January 27, 2004. Thus, based on this revised Declaration as well, Applicants have additionally demonstrated that they diligently pursued the invention from a time prior to December 9, 2003 until the filing of the present application on January 27, 2004. Accordingly, the rejection of all of the pending claims based on Hazzard is moot, and the pending claims are thus allowable over the cited prior art.

Conclusion

In light of the above remarks, Applicants respectfully submit that all of the pending claims are allowable, as are the withdrawn claims that depend from the independent method claim 16. Applicants therefore respectfully request the Examiner to reconsider this application and timely allow all pending claims. Furthermore, if independent method claim 16 is found to be in allowable form, Applicants request that the withdrawn claims 17-20, 22-23, 25-27 and 29-84 be reinstated and similarly allowed. If the Examiner has any questions or believes a telephone

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conference would expedite prosecution of this application, the Examiner is encouraged to call the undersigned at (206) 694-4815.

The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090.

Respectfully submitted,
SEED Intellectual Property Law Group PLLC

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Enclosure:

Declaration Under 37 CFR 1.131 of James A. D. White

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